



# Department of Justice

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**STATEMENT OF DEPUTY ASSISTANT ATTORNEY GENERAL J. BRUCE  
MCDONALD REGARDING KOREAN FAIR TRADE COMMISSION'S DECISION IN  
ITS MICROSOFT CASE**

WASHINGTON, D.C. – J. Bruce McDonald, Deputy Assistant Attorney General for the Antitrust Division, issued the following statement today after the Korean Fair Trade Commission announced a decision in its antitrust case against Microsoft, ordering Microsoft to sell in Korea a version of its Windows operating system that includes neither Windows Media Player nor Windows Messenger functionality, requiring Microsoft to facilitate consumer downloads of third party media player and messenger products selected by the Commission, and prohibiting Microsoft from selling in Korea a version of its server software that includes Windows Media Services:

“The Antitrust Division believes that Korea’s remedy goes beyond what is necessary or appropriate to protect consumers, as it requires the removal of products that consumers may prefer. The Division continues to believe that imposing ‘code removal’ remedies that strip out functionality can ultimately harm innovation and the consumers that benefit from it. We had previously consulted with the Commission on its Microsoft case and encouraged the Commission to develop a balanced resolution that addressed its concerns without imposing unnecessary restrictions. Sound antitrust policy should protect competition, not competitors, and must avoid chilling innovation and competition even by ‘dominant’ companies. Furthermore, we believe that regulators should avoid substituting their judgment for the market’s by determining what products are made available to consumers.

“The European Commission adopted a similar approach in its challenge to Microsoft’s bundling Windows Media Player. Since then, demand in Europe for the version of the operating system with the media player code removed has been lackluster, suggesting limited effect on competition from the type of unbundling remedy the Korean Fair Trade Commission is pursuing.

“Addressing Microsoft’s exclusionary conduct, the United States’ final judgment provides clear and effective protection for competition and consumers. Microsoft is prohibited from preventing computer manufacturers and end users from choosing alternatives to software like Windows Media Player and Windows Messenger. The United States continues to be active in its enforcement of Microsoft’s compliance with the judgment, and this work has resulted in substantial changes to Microsoft’s business practices.

“Notwithstanding today's divergence, it is important to emphasize the overall strong and positive relationship between the U.S. and Korea on matters of competition policy. The continued success of this working relationship is particularly important in the context of global markets, where the sale and use of products stretch across borders. The Justice Department will continue to work constructively with Korea to develop sound antitrust enforcement policies that benefit consumers in both countries.”

## **Background**

In its investigation of Microsoft and the resulting case -- pursued over the course of almost 10 years -- the United States challenged a series of exclusionary acts undertaken by Microsoft to maintain its monopoly position in Windows, including conduct designed to prevent computer manufacturers and end users from substituting the Netscape browser for Microsoft's Internet Explorer browser.

The United States filed a complaint against Microsoft in 1998, alleging that Microsoft had restrained competition in violation of U.S. antitrust laws. A lengthy trial and appeal confirmed that Microsoft had violated the Sherman Act.

Following remand of the case to the District Court, the United States reached a settlement, embodied in a final judgment, which was thoroughly reviewed and approved by the District Court and the Court of Appeals.

The final judgment prohibits Microsoft from preventing computer manufacturers and end users from substituting competitors' "middleware," giving them the ability to choose which programs they want to use. The final judgment covers the web browser that was the subject of the United States' lawsuit and the media player and instant messaging programs that are the subject of the Korean Fair Trade Commission's action.

Following these actions by the United States, in 2004 the European Commission (EC) imposed a different remedy to resolve its concerns regarding Microsoft's media player. The EC's "code removal" order compelled Microsoft to make available to consumers in Europe two versions of its operating system: one version cannot include the software code providing media player functionality; the other, like that available in the United States under the final judgment, is allowed to include such media player functionality.

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